Virtually none of AT&T's arguments are new and none are well taken. AT&T presents its position through a partial recounting of the facts and a strong infusion of its own opinion, which it also presents as fact. Under close scrutiny and in the context of the true and complete facts, AT&T's allegations about the reliability of Pacific's reported performance data wither.[50]

59. AT&T's claim rests on three arguments: that the work of PricewaterhouseCoopers ("PwC") was insufficient, that previous data reconciliations were too limited in scope, and that Pacific's maintenance and repair disposition codes are too broad. While my affidavit demonstrates that each argument lacks merit, certain observations are important. First, AT&T does not expressly alleges that Pacific's performance data are inaccurate, even though they, as in the case of prior applications, "have been subject to substantial scrutiny and review by interested parties throughout the section 271 process."[51] Indeed, with respect to the only assertion that arguably comes close, AT&T merely alleges that

[50] AT&T begins its criticism of Pacific's performance data with the statement that "[t]here is no sound basis for Pacific's claims that its performance data are accurate, and that its data demonstrate checklist compliance." AT&T Comments at **45.** AT&T's audacity is truly remarkable considering that Pacific recently learned that AT&T had been using its EDI CORBA pre-order **OSS** interface to submit bogus loop qualification requests.
Pacific **has** discovered that from **April** through mid-October 2002, AT&T's subsidiary, **TCG,** submitted over 2,200 bogus pre-order loop qualification requests for the address of **2600** Camino Ramon in San **Ramon,** which **is** the business address of Pacific's corporate headquarters. AT&T programmed its systems (its ECIP III gateway) to send hourly CORBA pre-order transactions for **this** address. The submission of these loop qualification requests negatively impacted Pacific's performance for one submeasure and bad a corresponding impact on its incentive payments.
SBC sent AT&T a letter informing it of this situation and requesting an explanation. While AT&T's response admits knowing that Pacific's corporate headquarters address contains a large number of circuits, it has only begrudgingly admitted that the loop qualification requests "may have inadvertently caused the CLEC average query response to be significantly higher than the parity average." AT&T advises that it disabled its program that was creating these bogus loop qualification requests on October 21, after **SBC** brought the matter to AT&T's attention. AT&T further advises that it is "willing to discuss mitigation" of resulting performance incentives payments well in excess of $100,000, due solely to AT&T's conduct.
Pacific strives to ensure the integrity of its reported performance results. However, Pacific cannot prevent CLECs, like AT&T, from taking advantage of the interfaces, processes and procedures that are provided to them in **a** way that creates the appearance that Pacific has "missed" a performance measure and thereby results in Pacific's makimg performance payments it otherwise would not have had to pay.

[51] *Arkansas/Missouri Order,* ¶ 18.

"Pacific's data must be eyed with suspicion" even while conceding that a data reconciliation has only recently been commenced.[52] This suggestion does not constitute evidence, and even if it did, it would not suffice to place the reliability of Pacific's performance data in doubt.[53]

60. Second, Pacific's performance data has been validated through a number of reviews, including:

- ***An*** independent third-party audit conducted by PwC;
- Several data reconciliations with California CLECs;
- OSS third party testing conducted by Cap Gemini/Ernst&Young;
- Replication of results conducted by Cap Gemini/Ernst&Young.

61. Third, other checks to the integrity of Pacific's data are in place. For example, the California Performance Measurements Joint Partial Settlement Agreement ("JPSA") provides for (a) CLEC/Pacific-funded annual comprehensive audits (upon recommendation by a joint steering committee, which includes representatives of the CLECs and Pacific), (b) mini-audits at the request of a CLEC, and (c) online availability to CLECs of underlying raw data. ***See*** App. C, Tab 71. ILEC/CLEC data reconciliations also are available to CLECs. Neither AT&T nor any other CLEC has requested a mini-audit of Pacific's results. Equally noteworthy is that on a regular basis, AT&T requests and Pacific provides raw data relating to Pacific's performance for AT&T. Yet, AT&T does not allege that these data are incorrect.

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[52] AT&T Toomey/Walker/Kalb **Declaration, ¶ 51 & n.42.**

[53] *Arkansas/Missouri* ***Order, ¶ 18 ("While the Commission believes that a systemic failure in a BOC's data integrity may necessitate third party review, AT&T bas*** not ***demonstrated a large-scale failure in the integrity of SWBT's data here.").***

COMPREHENSIVE PERFORMANCE MEASURE AUDIT

62. AT&T attacks the comprehensive third-party audit of Pacific's processes and systems used to produce the monthly performance measures report completed by PwC. **See** AT&T Toomey/Walker/Kalb Declaration, ¶¶ 22-42. AT&T does not limit its criticisms to Pacific's assessment of the audit and its value, but AT&T finds it necessary to attack both the audit and the auditor. Most surprising about this approach is that AT&T played a principal **role** in designing, overseeing and reviewing the outcome of this audit, yet they accept no culpability for the supposed flaws in the audit.

63. In fact, the planning and oversight of this audit were a collaborative effort among Pacific and participating CLECs, including AT&T. The audit steering committee was comprised of representatives from Pacific and the CLEC community, including representatives from AT&T, MCI/WorldCom, Sprint, NextLink, Cox Communications, CCTA, Covad and ICG Communications. Pacific worked with the CLECs to develop the Request for Proposal ("RFP) for the audit, which included a definition of the scope of the audit, the specific activities to be completed by the auditor during the audit, a plan to keep involved parties (including the CLECs) regularly apprised of the audit's progress and findings and the final report summarizing the audit results. Ultimately, AT&T's own proposal for the design audit (with only minor modifications) was the one accepted by the steering committee and was the one that provided the framework for the audit.

64. PwC was chosen unanimously by the representatives of Pacific and all participating CLECs. There was little debate over which firm was most qualified for the engagement. All the parties agreed that as PwC was willing to "attest" to their findings, they provided a greater assurance of valid findings than simply the consultation report offered by the other

respondents to the Request for Proposal. The audit steering committee believed PwC's opinion would carry more weight than the other audit firms interviewed.

65. AT&T now claims that the PwC did an unsatisfactory job and that its audit was superficial and incomplete. However, throughout the course of the audit, AT&T was provided with weekly status reports, participated in most if not all of the weekly status meetings or conference calls regarding progress **of** the audit (which included the opportunity to have discussions with the audit coordinator from PwC) and had two separate opportunities to review and ask questions regarding the final audit report. Neither during the audit or at the time of the release of the final report did AT&T claim that the audit was insufficient. If AT&T had such concerns, it had several opportunities during and after the audit to identify shortcomings it perceived. Yet long after the audit was complete, when it suits its interest, AT&T claims the audit was significantly flawed.[54]

66. In addition to criticizing PwC for not adequately completing the job for which it was engaged, AT&T criticizes PwC for allegedly not completing activities that were not part of its engagement. For example, AT&T claims that the raw data collected by Pacific was not validated with similar data collected by CLECs. But nowhere in the RFP, nor in any subsequent request by AT&T or any other party to the audit, was it suggested that such an activity be undertaken. Nonetheless, AT&T now complains that this validation should have been done, but was not.

[54] In fact, more than 30 meetings or conference calls were held with the joint steering committee during the course of the original audit and the two subsequent reaudits, most if not all of which were attended by a representative of AT&T. Each meeting/conference call provided AT&T with the opportunity to raise issues regarding the audit.

67. Despite AT&T's criticism of the audit scope and methodology, AT&T nonetheless relies on the audit's findings as supposed evidence of the insufficiency of Pacific's performance measurement system. However, the Commission should reject AT&T's tactics. AT&T should not be permitted to criticize the work that was done yet rely on the product of that work. In any event, my initial affidavit details the results of the audit and nothing in AT&T's comments suggest that these results should not be regarded as persuasive evidence supporting the reliability of Pacific's performance data.[55]

68. AT&T also quibbles about whether subsequent reviews of corrective actions taken by Pacific were audits. At best, this is a case of hair-splitting by AT&T. There was **no** requirement that corrective actions from PwC's audit be reviewed by an independent third party. **When** CLECs requested an examination of the corrective actions, Pacific agreed to subject its corrective actions to independent review by PwC. And, contrary to AT&T's recollection that Pacific chose PwC to complete these reviews, in fact, the joint steering committee selected PwC to conduct them. And, while AT&T had ample opportunity to present any concerns it had about the standards used during these reviews, it did not suggest that the reviews did not meet AT&T's expectations. In fact, CLECs (including AT&T) and Pacific generally have referred to these activities as reaudits, and AT&T has not questioned the use of the term until now.

69. In sum, AT&T claims that the PwC audit is insufficient, yet provides no persuasive evidence demonstrating that this **is** so. Moreover, to the extent that AT&T has been concerned about the integrity of Pacific's data, still it has not availed itself of the opportunity to have Pacific's data independently reviewed since the PwC audit. The JPSA

[55] Initial Johnson **Affidavit,** ¶¶ 200-209.

allows for a CLEC to request an independent audit of performance results. Such a "mini-audit" is available for both principal measures as well as submeasures reflecting performance for a CLEC. To date, however, neither AT&T nor any other California CLEC has requested a mini-audit of its performance data.

DATA RECONCILIATIONS

70. AT&T asserts that previous data reconciliations held among CLECs and Pacific "cannot legitimately be viewed as a comprehensive, reliable indicator of the integrity of Pacific's data."[56] AT&T further states that "Pacific cannot seriously contend that this process, standing alone, validated the accuracy of its performance data."[57] But AT&T places too much emphasis on value that these reconciliations offer to the Commission. Pacific does not claim either that these reconciliations were "comprehensive" or that they, "standing alone," validate Pacific's data. Rather, Pacific's position is that these activities **are** but a part of the overall evidence offered to demonstrate **to** the Commission that Pacific's data are accurate and can be relied upon. No more than that need be shown regarding the reconciliation activities?'

71. Since AT&T suggests that the reconciliations were without value, one wonders why it has participated in them. Yet, by its own account, AT&T has used the data reconciliation

[56] AT&T Toomey/Walker/Kalb Declaration, ¶ 43.
[57] *Id.*
[58] As noted in this reply affidavit and in my initial affidavit, multiple items of evidence demonstrate the showing required of Pacific. ***See Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky. Mississippi, North Carolina, and South Carolina,*** Memorandum Opinion and Order, 17 FCC Rcd 17595, ¶ 16 (2002) ***("Five Stare Order")*** ("[W]e find that, as a general matter. BellSouth's performance metric data are accurate, reliable and useful. This is based on extensive third party auditing, the internal and external data controls, **BellSouth's** making available the raw performance data to competing carriers and regulators, BellSouth's readiness to engage in data reconciliations, and the oversight and review of the data, and of proposed changes to the metrics, provided by state commissions.").

process to validate the reported performance results for several performance measures. As with its approach regarding its criticism of PwC's audit, AT&T minimizes the value of the data reconciliation process, but attempts to use the results of the same process to support its claim that Pacific's data is flawed. This approach is inconsistent at best.

72. Additionally, AT&T wrongly asserts that Pacific has resisted a "comprehensive data reconciliation process."[59] With respect to the Commission-sanctioned reconciliation project in 2000, Pacific did request that the scope of this project be reasonably limited so that all parties could reasonably manage the work required. That approach proved worthwhile for the CLECs as well because, once the project was underway, the CLECs further limited the scope of the reconciliations because they were unable to produce as much of their own data as they had first believed, due to workload considerations and limitations in their data tracking processes.[60]

73. AT&T also alleges that Pacific provides an incomplete picture of the reconciliation work completed with AT&T during the fall of 2000 and in 2001. AT&T Toomey/Walker/Kalb Declaration, ¶ 44-45. AT&T's portrayal is itself incomplete. The outcome of the reconciliation in 2000 was that most of the issues could be attributed to disagreements over the interpretation of performance measure business rules. AT&T points to restatements of Pacific's data for Measure 15 (Provisioning Troubles) and Measure 16 (Percent of Troubles within 30 Days), but fails to mention that these restatements were

[59] AT&T Toomey/Walker/Kalb Declaration, ¶ **43.**

[60] Though it initially committed to be part of this reconciliation effort, XO withdrew from the project citing workload constraints before any reconciliation work was completed. **Also,** Pac West, WorldCom and New Edge ultimately limited the amount of **their** own data provided for reconciliation due to data tracking and workload concern.

made as the result of a change in an operational process, not due to a data tracking problem with either measure.

74. AT&T also describes a data reconciliation of Measure 16 results in 2001.[61] AT&T notes that six troubles were not reconciled and nine troubles were reclassified by Pacific. AT&T Toomey/Walker/Kalb Declaration, ¶ 45. However, AT&T does not point out that its some of its own data were likewise found to be flawed during this reconciliation.[62] AT&T misunderstands the true value of a data reconciliation. Both participants benefit from the undertaking because the process allows each party to refine its own data collection practices and ensures that they are comparing like figures when they are discussing performance results.

75. Finally, AT&T complains that Pacific is relying on an audit and data reconciliations completed one to two years ago.[63] AT&T claims these activities have little bearing on the current integrity of Pacific's data. Instead, AT&T proposes that the Commission use, as probative evidence, a data reconciliation undertaken in another state, alleging that this reconciliation is more informative with respect to the integrity of Pacific's reported results than reviews of Pacific's own data.[64] This is nothing more than a red herring, because what is important is that Pacific remains ready to engage in a data reconciliation when requested by a CLEC; whether a CLEC requests a reconciliation (and when it requests one) is a matter for it alone to decide.

[61] AT&T Toomey/Walker/Kalb Declaration, ¶ 45.
[62] During this reconciliation **23** UNE Platform trouble reports were examined. The findings concluded that two were correctly excluded from the results, five were correctly included in the results and six troubles could not be reconciled. In addition, nine troubles counted in Measure 15 should have been counted in Measure 16 and seven troubles (and potentially thirteen) were correctly reported by Pacific but shown in error in AT&T's data.
[63] AT&T Toomey/Walker/Kalb Declaration, ¶ 46.
[64] *Id.*, ¶¶ 46-48, 52-54.

APPROPRIATE CODING OF CLEC CAUSED TROUBLES

76. A specific issue that AT&T cites as an indication that Pacific may not be reporting performance results correctly is the coding of CLEC caused troubles in the maintenance performance measures.[65] AT&T alleges that Pacific's coding scheme for maintenance troubles includes codes in the category of "CLEC caused Troubles" (which are excluded from the maintenance results), which include trouble conditions that should be included in the maintenance results.[66] AT&T's central theme is that certain codes in the category of CLEC caused trouble can inappropriately be used by the maintenance technician if he or she only suspects the trouble is in the CLEC's network.[67] AT&T overlooks certain important points regarding the substance of its assertion. Just because a trouble is not found in Pacific's network when the network is tested does not mean that the customer's circuit is without trouble. Unless reasonably definitive test results are available for the CLEC's (or ILEC's) portion of the circuit, a conclusion of "Test Okay" or "Found Okay" on the circuit cannot be made.[68] Therefore, absent information about the condition of the CLEC's portion of the circuit, including that portion beyond the minimum point of entry at the customer's premises, the maintenance technician can reasonably conclude that trouble is suspected in the CLEC's portion of the circuit.

77. Further, this is the first time AT&T has raised this issue to Pacific. If AT&T has continuing concerns regarding the coding of maintenance tickets by Pacific's technicians, it may present the problem directly to its account team or bring the issue for review to the

"Maintenance activities are tracked in PMs 15, 16, 17, 19, 20, 21, 22 and 23.
[66] AT&T Toomey/Walker/Kalb Declaration, ¶¶ 52-54.
[67] AT&T's references are to Code 1313 (Trouble suspected or determined to be in a Reseller's network) and Code 1312 (Trouble suspected or determined to be in an ILEC's network or facility). ***Id.***, ¶ 53.
[68] Test Okay and Found Okay (Codes 7, 8 and 9) are includable in maintenance measurement results.

PM Review collaborative, which has been underway since June of this year. Alternatively, the mini-audit provisions of the JPSA serve as an adequate mechanism by which to resolve AT&T's questions.

PACIFIC'S CPUC-APPROVED PERFORMANCE INCENTIVES PLAN WILL F(ER POST-ENTRY CHECKLIST COMPLIANCE

78. AT&T and XO argue that Pacific's CPUC-approved Performance Incentives Plan is deficient. According to AT&T, the plan "does not operate to provide meaningful penalties for substandard performance."[69] According to XO, the plan results in "nominal" payments." It is clear that their criticisms, however stated, are squarely directed to the plan's curvilinear payment structure to which they object (as no other detail is offered relative to another aspect of the plan)." Both their general criticisms about the adequacy of payments as well as their specific objection to the plan's curvilinear payment structure are incorrect and misleading. Moreover, there are other considerations militating in favor of rejecting these CLECs' attempts to restructure Pacific's CPUC-approved Performance Incentives Plan. In sum, the Commission should conclude that the plan affords sufficient assurances that Pacific will continue to comply with the checklist on a post-long distance entry basis.

79. It is important to first note that the per-failure incentive amount is not constant. Rather, under the "curvilinear" structure of the plan, the per-failure payment amount increases as Pacific ''misses" more measures. Thus, monetary liabilities mount as performance

[69] AT&T Toomey/Walker/Kalb Declaration, ¶ 85.
[70] XO Comments **at** 30.
[71] AT&T Toomey/Walker/Kalb Declaration, ¶¶ 86-89; XO Comments **at 30.**

worsens. Moreover, the plan is calibrated appropriately to effectuate this approach in a rational way.

80. First, consider the performance implications of the plan. For the parity sub-measures, which constitute about 75% of all submeasures, Pacific's Performance Incentives Plan calls for a Type I error rate of either 5% (for sample sizes above 500) or 10% (for sample sizes below 500) and occasionally 20% (for sample sizes less than 30 when the aggregate for the submeasure fails). Taken together, these conditions imply that Pacific may be expected to miss between 5% and 10% of its parity tests in any month ***even when it is providing service*** *at a performance* ***standard*** *that* ***is exactly*** *parity*. Add to this figure the inevitable Type I errors associated with benchmark comparisons (occasioned by the application of benchmarks to small samples) and it is clear that failure rates in the neighborhood of 5% constitute excellent service under the plan. It is not obvious, therefore, why liability pegged at 1% for a 5% failure rate is not a reasonable and appropriate consequence of the plan.

81. Second, these CLECs do not support the contention that a 1% increase in liability ought to accompany a 1% increase in the failure rate. While it is true that such a "linear" scheme would require payments of 5% of the cap at levels of service that are otherwise excellent, it would also require that Pacific *miss all parity* ***tests*** *and benchmarks* before reaching the cap (which one would think to be unacceptable to these CLECs). Indeed, the CLECs have neglected to point out that the Pacific plan reaches the cap at a failure rate that is somewhat less than 50% of all tests and comparisons. The plan achieves this result by ***increasing the rate*** at which payments increase as the failure rate rises above 10%. Because payments are approximately proportional to the ***square*** of the failure rate,

performance decrements much beyond what would be expected from random variation will constitute substantial incentives to improve service.

82. Third, the CLECs also fail to mention the other mechanism in the plan that protects against discrimination even when the overall failure rates are quite low. In particular, the payments associated with chronic and extended chronic failures quickly increase Pacific's liability on those submeasures for which Pacific's performance suffers repeated failures.

83. In any case, AT&T's and XO's criticisms of the strength of Pacific's Performance Incentives Plan should yield to the deference that should be paid to the CPUC's judgment in the fashioning, implementation and continuing administration of this plan. First, the final development of the Performance Incentives Plan followed years of studies, discussions and debates among the CLECs, Pacific and the CPUC. Regardless of AT&T's and XO's views as to limited aspects of the plan, this Commission has recognized that plans "may vary in their strengths and weaknesses, and there is no one way to demonstrate assurance" that the market will remain open. ***Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas,*** Memorandum Opinion and Order, 15 FCC Rcd 18354, ¶ 423 (2000). The Commission's recognition is particularly applicable here, given the years of multi-party effort expended on crafting Pacific's plan.

84. Second, the Commission may expect that the CPUC will maintain vigilant oversight of Pacific's plan. In its March 6, 2002 ***Incentives Decision,*** the CPUC decided that the plan

should start off with an initial implementation period, followed by a review to consider how well the plan actually works. In particular, the CPUC ordered implementation "for an initial period of six months or until otherwise modified by [the CPUC]," and further ordered that "[f]ollowing the six-month initial period, the performance of the incentives plan model shall be reviewed. Such review shall examine how the incentives plan model is functioning and shall include any adjustments and modifications to the components.[72] The upcoming review clearly affords AT&T and XO a full and fair opportunity to present to other CLECs, Pacific and the CPUC their views and suggestions as to how they believe the plan's structure might be adjusted or modified. It likewise allows potentially affected parties to offer their own views and suggestions in a setting more conducive to everyone's interests than this section 271 proceeding.[73]

85. Third, other state commissions have likewise received a degree of deference in the area of performance assurance plan administration. For example, the Commission observed in its *Arkansas/Missouri Order* that the Texas Commission had "been asked to address questions regarding modification and implementation of the Texas performance remedy plan in a complaint filed by AT&T."[74] The Commission prudently determined that "[g]iven that these issues are under review by the Texas Commission, we do not conclude

[72] Opinion on the Performance Incentives Plan for Pacific Bell Telephone Company at 91, D.02-03-023 (Mar. 6, 2002) (***"Incentives Decision")*** (App. C, Tab 76). Pacific first made payments under the plan in June, for April performance results reported in May.

[73] XO also asserts that another "fundamental problem" with the plan is that ratepayers receive incentive amounts in excess of the total amount charged a CLEC by Pacific for OSS services and for local exchange for the CLEC's customers (*i.e.*, surplus credit amounts). XO Comments at 31. However, the CPUC implemented **this** mechanism as a means **of** basing incentive payments on "overall **industry** effects." ***Incentives*** *Decision* at 64. To the extent that the "overall **industry"** shares **XO's** view that this feature of the plan is a "fundamental problem," that view may likewise be conveyed during the CPUC's review of the plan.

[74] ***Arkansas/Missouri Order,*** ¶ 134.

that the Arkansas and Missouri plans are insufficient."[75] AT&T has no less wherewithal to request modifications from the CPUC as the Texas Commission, and this Commission should decline AT&T's request, in effect, that the Commission should get out in front of the CPUC.

86. Finally, it is settled that performance plans adopted by state commissions do not represent the only means of ensuring that a successful section 271 applicant will continue to provide nondiscriminatory service to CLECs. Other potential consequences, in addition to financial penalties imposed by such plans, include enforcement action and various remedies associated with other legal actions.[76] For this additional reason, the Commission need not consider AT&T's or XO's otherwise incorrect assertions.

87. This concludes my reply affidavit.

[75] *Id.*
[76] ***See Five State Order,*** **¶ 294.**

STATE OF CALIFORNIA)
)
COUNTY **OF** CONTRA COSTA)

I declare under penalty of perjury that the foregoing is true and correct.

'Gwen S. Johnson

Subscribed and sworn to before **me** this 29 day of October, 2002

Notary **Public**

SCOTT L. BOOTH
Commission # 1246609
Notary Public - California
Contra Costa County
My Comm. Expires Dec 23, 2003